

Your name: Anita Miralle, Jodii Le'grand Everett I, Irvin Ortega  
Tina Scott, Aiyahanna Johnson, Lucas D Brown

Address: 4799 Shattuck Ave

Oakland CA 94609

Phone Number: 510. 355. 7010

E-mail Address: maowunyo@gmail.com

Pro se

**FILED**

NOV 09 2018

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA  
OAKLAND OFFICE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Division [check one]: ☐ San Francisco ☒ Oakland ☐ San Jose ☐ Eureka

Anita Miralle, Jodii Le'grand Everett I, Tina Scott,  
Aiyahanna Johnson, Lucas D Brown,  
Irvin Ortega Hernandez Ortega,  
 Plaintiff,

vs.

Mayor Libby Schaaf,  
Joe DeVries,  
The City of Oakland - a  
subdivision of the state of CA,  
 and Does 1-10  
 Defendant.

Case Number: C18-6823

NOTICE AND MOTION [type of motion]

FOR Preliminary  
INJUNCTION

AND MEMORANDUM IN SUPPORT

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

COURTROOM: \_\_\_\_\_

JUDGE: \_\_\_\_\_

Hon. \_\_\_\_\_

NOTICE AND MOTION [type of motion]

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Preliminary Injunction

## I. NOTICE OF MOTION

PLEASE TAKE NOTICE that on [date] \_\_\_\_\_,  
at [time] \_\_\_\_\_, at [courtroom number and address] \_\_\_\_\_,

before the Honorable [judge's name] \_\_\_\_\_,

I will, and hereby do, move for an order granting this Motion [type of motion]

for Preliminary Injunction

The motion will be based on this Notice and Motion, the Memorandum of Points and Authorities below, the Declaration(s) of [names of people who wrote declarations] \_\_\_\_\_

and the [Proposed] Order.

## II. ISSUES TO BE DECIDED

[Write each question or request that you are asking the Court to decide in this Motion. There may be one issue, or more. See the Instructions for examples.]

1. ~~Does~~ By removing a homeless encampment does this jurisdiction follow the ruling of Martin vs. Boise 9th Cir. 2018 No. 15-35845 or is it <sup>encl. of unlawful punishment?</sup>
2. Does this jurisdiction follow the ruling in Pottinger v. Miami, 810 F.Supp 1551 (1992), requiring "Safe Zones" for homeless?
3. Are plaintiffs entitled to due process of law prior to removal
4. Has defendants violated plaintiffs due process rights by threatening 12 hour notice before removal
5. Is the notice provided to plaintiffs legally sufficient? (Exhibit A)

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### III. MEMORANDUM

#### A. Statement of Facts

*[Write the facts relevant to the Motion. Add more pages as needed. At the end of each sentence, write where evidence of that fact can be found. See the Instructions for more detail.]*

On Elmhurst between 1600 Clara St and 9418 Edes Ave on the north side of the street, there are two public parcels known as "The Housing And Dignity Village". A third of the parcel is cemented and two-thirds are overgrown with weeds. The land has been vacant for more than 20 years and used for illegal dumping. It is located in the Brookfield neighborhood - one of the most historically underserved neighborhoods in Oakland, CA. Our intentional community moved to this site Oct 27, 2018. We created a safe, clean and sober space for homeless women & their families. Homeless men we trusted moved on site to play pivotal roles as security and legal observers. We have a community based decision making process & support from housed volunteer advocates and volunteer supporters. Our first act was to clean the illegal dumping that had accrued on the vacant land, to clean illegal dumping around the perimeter & weed the perimeter. Many members of our intentional community, volunteers & neighbors can attest to this. We are supported by East Oakland

NOTICE AND MOTION [type of motion]

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## A. Statement of Facts cont.

Collective, The Village, Pellum Institute for Social Justice, The Amm. <sup>for the</sup>  
Since <sup>we</sup> arrived at this site. We have housed  
11 <sup>homeless</sup> women, ~~their~~ <sup>their</sup> families, including their  
families, and homeless men who are  
serving pivotal support roles at the  
women's encampment including  
security & legal observations. ~~The~~  
~~the~~ The Brookfield neighborhood is  
one of Oakland's most underserved  
communities & also has ~~a~~ a large  
unhoused population. We have built  
up services to meet the needs of both  
the housed & unhoused neighbors including  
free hot ~~breakfast~~ <sup>breakfast</sup> & dinner, <sup>4x a week</sup> free grocery  
distribution, once a week, free weekly  
medical clinic, free provisions distribution,  
~~free toilet~~ a public toilet, solar  
charging stations, free internet.  
At the time of the eviction notice  
being posted we were building  
more ~~living~~ emergency shelter  
structures for other ~~the~~ homeless  
women seeking sanctuary from the  
streets, ~~a~~ a community garden  
& identifying other community needs,  
solar grid. The day before the eviction  
was posted by the City of Oakland, ~~we~~



Flameless County Supervisor Nate Mulley & his staff  
visited & our community & stated his support.  
including providing us with showers & flushable  
toilets. The day the notice was posted California  
Senator Nancy Skinner, CA Congressman Ray  
Bonta & U.S. Senator Barbara Lee also  
expressed their support of our community

**B. Argument**

[You should have an argument section for each issue that you listed on page 2. Explain why the Court should rule in your favor on each issue. Provide facts and case law/statutes (if you have any). Add more pages as needed.]

In *Martin vs. City of Boise* 9th Circuit  
2018, No 15-35845 the court found:

that plaintiffs who are homeless or have recently been homeless have their 8th Amendment Rights violated insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them. Plaintiffs may be entitled to retrospective & prospective relief for violation of the 8th Amendment's Right, ~~and~~ prohibition on cruel & Unusual punishment.

The facts set forth in this motion ~~are~~ are as such there are not enough adequate shelters or housing accessible to the ~~the~~ members of the Housing & Dignity Village due to their status as women with families, due to their work schedules and due to their health conditions. To evict them & call their attempt to provide themselves with safe shelter when there is no other option is cruel & unusual punishment.

NOTICE AND MOTION [type of motion] Preliminary Injunction



In *Pottinger v. City of Miami* (810 F.Supp. 1551 (1992)) the court found:

"The court concludes that the City's practices of arresting homeless individuals for performing inoffensive conduct in public when they have no place to go is cruel & unusual in violation of the 8th amendment, is overbroad to the extent that it reaches innocent acts in violation of the due process clause of the 14th Amendment & infringes on ~~the violation~~ the fundamental right to travel in violation of the equal protection Clause of the 14th Amendment."

The facts set forth in this motion are identical to those in *Pottinger v. City of Miami* (supra). If defendants proceed to remove plaintiffs from life sustaining shelter under threat of arrest the plaintiffs will suffer irreparable injury.

[You must sign and date.]

Respectfully submitted,

*Irvin Jose Hernandez*  
*David Lucas Brown*  
*John L. Everett*

Date: 11/7/2018

Sign Name:

Print Name:

*Arata Miralle*, *John L. Everett*

NOTICE AND MOTION [type of motion] *David Lucas Brown*

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1 Insert a copy of this page as needed to continue any section, or to write an introduction.

2 Accordingly, Plaintiffs seek an order  
 3 from this court enjoining Defendants  
 4 from 1) Removing Plaintiffs from the property  
 5 commonly known as ~~at~~  
 6 , also known as "Housing &  
 7 Dignity Village" 2) taking ~~action~~ any action  
 8 outlined in the "NOTICE OF TRESPASS" and  
 9 ~~from pasting any~~ "Notice to Vacate Illegal  
 10 Encampment" and 3) from pasting any  
 11 future such notices until such time as  
 12 a final determination before the court  
 13 is issued.

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 NOTICE AND MOTION [type of motion]

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Your name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Pro se

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Division *[check one]*: ☐ San Francisco ☐ Oakland ☐ San Jose ☐ Eureka

_____	)	Case Number: _____
_____	)	<b>DECLARATION OF</b> <i>[name of person signing]</i>
Plaintiff,	)	<u>Briana Gilmore</u>
vs.	)	<b>IN SUPPORT OF MOTION</b> <i>[motion title]</i>
_____	)	<u>For Preliminary Injunction</u>
_____	)	_____
_____	)	DATE: _____
_____	)	TIME: _____
Defendant.	)	JUDGE: _____
_____	)	Hon. _____

*[In the first paragraph, explain who you are. If you are the Plaintiff or Defendant, say so here. If you are a witness, say how you are connected to the party or events in this case.]*

1. I am a community member and volunteer with the community targeted for eviction, and a witness.

2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

DECLARATION OF *[name]* Briana Gilmore  
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[Write each fact in a separate, numbered paragraph, starting with 3. You may only write about facts that you know personally, such as events you witnessed. Explain how you know each fact. If you want to include documents, see the Instructions. Make copies of this page if you need more space.]

3. Our intentional community, informally called ~~XXXXXX~~ <sup>Housing and Dignity Village</sup>, has occupied our present location at the intersection of Edes and S. Elmhurst since October 27, 2018.

4. Since 10/27/18, housed and unhoused volunteer community members established a kitchen serving daily groceries and breakfast and regular hot meals, as well as medical care, clothing, bedding and tents, a toilet, and socialization, all free of charge.

5. Many of our residents are women, members of at-risk communities, and people facing vulnerabilities in other unhoused communities.

6. Since the beginning of this community, decisions about how to operate and govern here have been made collaboratively, centering community need including the priorities of housed neighbors.

7. We volunteers, including people living here, have done extensive community outreach to meet neighbors, hear their concerns, resolve issues, and provide resources. With very limited exceptions, we have received significant support from our housed neighbors.

8. This community was established as a direct response to the failure of other unhoused settlements and shelters to meet the needs of safety and sanitation required for human well-being, particularly those of unhoused women.

DECLARATION OF [name] Briana Gilmore

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9. I have read the statement of facts contained in the motion for Preliminary Injunction and attest that those facts are true and correct.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: 11/7/2018

Sign Name:

Briana Gilmore

Print Name:

Briana Gilmore

DECLARATION OF [name] Briana Gilmore

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## **NOTICE TO VACATE ILLEGAL ENCAMPMENT**

**DATE OF POSTING:** 11/ 07 /2018

**LOCATION:** 606 Clara St/ 9418 Edes Ave

**THE CITY HAS DEEMED THIS SITE UNINHABITABLE AND ALL PERSONS  
ARE DIRECTED TO VACATE THIS SITE AND REMOVE ANY PERSONAL  
BELONGINGS.**

**PUBLIC WORKS DEPARTMENT WILL BE OUT TO CLEAR AND CLOSE  
THIS SITE**

**ON: Saturday  
DATE: 11/10 /2018**

**PUBLIC WORKS CREWS WILL ARRIVE TO CLOSE THIS ENCAMPMENT  
BETWEEN THE HOURS OF 8 AM AND 4 PM ON THE DATE SPECIFIED  
ABOVE, OR ON THE NEXT BUSINESS DAY.**

**ANY PROPERTY LEFT AT THIS SITE AT THE TIME OF CLEANUP WILL  
BE REMOVED FROM THE SITE AND STORED BY PUBLIC WORKS.  
PROPERTY THAT IS UNSAFE OR HAZARDOUS TO STORE WILL BE  
IMMEDIATELY DISCARDED.**

**IF YOU HAVE ANY QUESTIONS AND/OR CONCERNS PLEASE CALL  
510-882-7941 or 1-800-686-9036**

*Exhibit A*